No. 80-1026

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CHRYSLER CORPORATION,
Petitioner,

vs.

RICHARD F. DAWSON and DIANA DAWSON, individually and DIANA DAWSON as parent and natural Guardian of BRYAN DAWSON, a minor,
Respondents.

PETITIONER'S REPLY BRIEF

HARRY A. SHORT, JR.
Attorney of Record
LIEBERT, SHORT, FITZPATRICK & LAVIN
One Franklin Plaza
Philadelphia, Pennsylvania 19103
(215) 564-5800

SHEILA L. BIRNBAUM
SKADDEN, ARPS, SLATE, MEAGHER & FLOM
919 Third Avenue
New York, New York 10022

CARYL L. PICOTTE
12000 Lynn Townsend Drive
Detroit, Michigan 48288

Attorneys for Petitioner
Chrysler Corporation

Of Counsel:

WILLIAM R. MEAGHER
GARY E. CRAWFORD
EDWARD G. IMPERATORE

TABLE OF CONTENTS

	PAGE
I. The Design Standard in This Case, Established Without Proof of Compliance With Federal Safety Standards or Overall Crashworthiness, Undermines the Pervasive Federal Scheme of Uniform Vehicle Safety Regulation	3
II. Petitioner Properly Raised the Issue of Respondents' Failure to Prove Compliance With Federal Standards	5
III. State Contract Law and the State Procurement Exception to the Preemption Provision of the Act Are Inapplicable to This Case	7
IV. Review of the Important Federal Issues Presented in the Petition is Essential at This Time	8
CONCLUSION	10

TABLE OF AUTHORITIES

Case Cited

Linn v. *United Plant Guard Workers,* 383 U.S. 53 (1966) 1, 2

Statutes Cited

15 U.S.C.:

Sec. 1392(d) 1, 2, 6-8

Sec. 1397(a)(1)(A) 6

Sec. 1397(c) 1, 2

No. 80-1026

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CHRYSLER CORPORATION,

Petitioner,

vs.

RICHARD F. DAWSON and DIANA DAWSON, individually and DIANA DAWSON as parent and natural Guardian of BRYAN DAWSON, a minor,

Respondents.

PETITIONER'S REPLY BRIEF

This brief is submitted on behalf of Petitioner Chrysler Corporation in reply to Respondents' Brief in Opposition to the Petition for a Writ of Certiorari ("Resp. Br.").

Respondents' arguments against granting certiorari are predicated upon a misstatement of the questions presented by the Petition. Petitioner has not, as respondents erroneously claim, argued that: (1) § 1397(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (the "Act"), providing for liability at common law, should be declared unconstitutional; or (2) compliance with Federal Motor Vehicle Safety Standards is an absolute defense to liability at common law.

To the contrary, petitioner contends that the provision of the Act preserving liability at common law (15 U.S.C. § 1397(c)) must be construed *in pari materia* with the Act's explicit preemption provision (15 U.S.C. § 1392(d)), so as to avoid frustration of significant congressional objectives and imposition of undue burdens on interstate commerce. Respondents completely ignore the import of § 1392(d), and seek to divert the Court's attention from the significant federal questions raised in the Petition.

This Court has recognized in the past that when the availability of state common law remedies "interfere[s] with effective administration of national . . . policy," resolution of the competing interests "entails accommodation of the federal interest in uniform regulation . . . with the traditional concern and responsibility of the State to protect its citizens. . . ." *Linn* v. *United Plant Guard Workers,* 383 U.S. 53, 64, 57 (1966).

Although *Linn* involved concerns over national labor policy, the Court's rationale and approach to accommodating common law defamation actions with the congressional goal of achieving uniform regulation of labor relations apply with equal force to the instant action. In *Linn,* the competing state and federal interests were accommodated by limiting "the availability of state remedies."

Id. at 64. The Court imposed strict proof requirements on plaintiffs in common law libel actions to "minimize" the possibility of interference with the federal program and "to effectuate the statutory design with respect to preemption." *Id.* at 64-65. A similar approach is necessary in this case. In order to minimize the possibility of adverse consequences on the federal scheme of uniform vehicle safety regulation, the Petition for a Writ of Certiorari should be granted so the Court may define the proof requirements to be imposed on plaintiffs in common law actions involving aspects of vehicle performance that are specifically governed by federal standards.[1]

Unless this Court strikes an accommodation between § 1392(d) and § 1397(c) by requiring claimants in such common law actions to prove that a proposed alternative design would (1) comply with Federal Motor Vehicle Safety Standards, and (2) produce an overall crashworthy vehicle, the clearly articulated congressional objectives of establishing national uniformity in the regulation of vehicle performance standards and of promoting overall highway safety will be thwarted. Congress recognized this danger when it expressly provided in § 1392(d) that state safety standards are to be preempted when they are "not identical" to applicable federal standards.

In an effort to avoid squarely confronting the constitutional questions presented in the Petition, respondents not only distort those questions,[2] but also raise factual

---

[1]Respondents inaccurately characterize petitioner's argument as urging an absolute bar to state common law actions involving defective automobiles. In fact, petitioner does not argue that the availability of state common law remedies should be limited where, for example, plaintiff's theory of liability is predicated upon a challenge to an aspect of vehicle performance not governed by federal regulations or where plaintiff's claim is based on breach of a manufacturer's express warranty.

[2] Respondents' misleading treatment of the questions presented by the Petition is reflected, in part, by their reliance upon Ap-

(Footnote continued on following page)

arguments that were either expressly rejected by the courts below or directly contradicted by the record.

I. The Design Standard in This Case, Established Without Proof of Compliance With Federal Safety Standards or Overall Crashworthiness, Undermines the Pervasive Federal Scheme of Uniform Vehicle Safety Regulation.

As the National Highway Traffic Safety Administration has made abundantly clear, the entire scheme of federal regulation of vehicle safety is premised on a coordinated effort to promulgate uniform mandatory regulations designed to promote overall crashworthiness. *See* Petition at 12 n.6. Permitting the jury in this case to establish a safety standard without considering proof of compliance with federal standards or overall crashworthiness seriously undermines the federal scheme.

Compliance with Federal Standards. Notwithstanding respondents' repeated protestations to the contrary (Resp. Br. at 7, 17, 23), there is no proof of compliance with federal standards in the record. In fact, the District Court expressly found that respondents "pointed to no expert testimony indicating the alternate design would meet federal standards. . . ." Resp. Br. at App. A, 4a. Nowhere in its opinion did the Court of Appeals reject this conclusion.[3]

(Footnote continued from preceding page)

pendix F to their brief, an opinion of Frank Berndt, General Counsel to the National Highway Traffic Safety Administration, elicited by respondents' counsel after the filing of the Petition. This document is not a part of the record and was created *ex parte* solely for inclusion in Respondents' Brief. It fails to address in any way the significant constitutional arguments that petitioner has raised. Petitioner has made a motion to strike this document on the ground that its submission was highly improper. *See* Petitioner's Motion to Strike, dated January 27, 1981.

[3] The fact that petitioner did not prove noncompliance cannot, as respondents imply, either establish such compliance by default or cure respondents' failure to meet their burden of proof on this issue.

Apparently recognizing the weakness of their position on this issue, respondents make the spurious argument that the alternative design was a "minor modification," which "obviously would have complied." Resp. Br. at 6. That no such inference can properly be drawn is evident. Increasing the weight and rigidity of a vehicle so as to meet the exigencies of one particular crash situation necessarily raises complex technological questions about whether the vehicle will continue to perform at federally-mandated safety levels in other types of accidents. *See* Petition at 12 n.6. The Court of Appeals recognized this problem and expressed concern that respondents may have compromised safety in one aspect of performance to gain benefits in another. *See* Petition at App. A, 25a-26a.

Overall Crashworthiness. Respondents do not question the necessity of proving overall crashworthiness; rather they state only that such proof was presented. This assertion is without foundation in the record. Respondents have been unable to point to the testimony of even a single witness to support the claim that the overall crashworthiness of their design was established at trial. In an effort to circumvent the important federal issues raised by this failure of proof, respondents direct the Court's attention to what they have disingenuously described as "federally sanctioned"[4] research studies. Despite respondents' claim to the contrary, these reports do not address the issue of the overall crashworthiness of their proposed design or its compliance with federal standards.

The reports in question are interim research studies involving a host of different tests performed on a variety of prototype vehicles of differing structural configurations.

---

[4] These reports were not "federally sanctioned." *See* Resp. Br. at 7. Although prepared for submission to the Department of Transportation, the reports carry clear disclaimers that the opinions and findings expressed in the publications are those of the authors and not of the National Highway Traffic Safety Administration. Resp. Br. at App. D, 21a; App. E, 31a.

Those portions of the reports' "Summary" and "Conclusions and Recommendations" that have been excerpted in Appendices D and E to Respondents' Brief demonstrate that the findings refer, not to any single design, but rather to the whole "mix" of design changes used in the research. These included substantial modifications of side pillar, roof, and door structures (Resp. Br. at App. E, 32a-36a), none of which were ever alleged to be part of respondents' proposed frame design. Thus, it is highly inaccurate for respondents to state that the reports "specifically approved" their proposed alternative design or demonstrated its overall crashworthiness.[5] *See* Resp. Br. at 7.

II. Petitioner Properly Raised the Issue of Respondents' Failure to Prove Compliance With Federal Standards.

Contrary to respondents' assertion, neither the District Court nor the Court of Appeals ruled that petitioner "waived" its argument that respondents failed to prove their proposed alternative design would comply with mandatory Federal Motor Vehicle Safety Standards. In fact, this issue was properly raised in the District Court.

In its motion for a directed verdict at the conclusion of all the proof and again in its motion for judgment notwithstanding the verdict, petitioner contended that respondents had not presented proof of the existence of a safer, practicable alternative design so as to justify submitting the case to the jury. The District Court clearly recognized and in fact acknowledged that this argument

---

[5] Notably, the District Court concluded that these reports had virtually no evidentiary significance. In ruling on Chrysler's contention that the reports had been improperly admitted, the District Court held that "[e]ven if erroneously admitted, the reports were such a small part of the expert testimony as to be harmless error within Rule 61." Court of Appeals Appendix for Appellant at 3570a.

encompassed the contention that respondents had failed to demonstrate compliance with federal standards. The District Court, in response to petitioner's motion for judgment notwithstanding the verdict, pointed directly to the issue of federal compliance: "Chrysler also argues that there is no evidence that plaintiff's alternative design meets federal standards, and therefore [the design] could not be the practical alternate that New Jersey law requires." Resp. Br. at App. A, 4a. Since the motion for judgment notwithstanding the verdict merely incorporated by reference the arguments made in the motion for a directed verdict (Court of Appeals Appendix for Appellant at 3542a), it is evident that the issue had already been brought to the trial court's attention.[6]

Moreover, the fact that petitioner did not seek to prove that respondents' alternative design was not in compliance with federal standards cannot logically be construed as a waiver of petitioner's argument to the District Court that the burden of proving such compliance rested squarely on the respondents as the parties proposing the alternative design.

Petitioner, citing § 1392(d) of the Act and the legislative history dealing with preemption, also raised the issue of compliance with federal standards in the Court of Appeals:

> Without evidence that the proposed alternative design meets the existing standards of the National

---

[6] Petitioner's contention in the motion for a directed verdict was that respondents failed to establish that a "safer alternative design . . . was available within the limitations of cost, technology and marketability in 1974." Court of Appeals Appendix for Appellant at 3493a-94a. That this argument necessarily constituted a challenge to respondents' failure to prove compliance with federal standards is apparent when Chrysler's challenge is viewed in the context of the Act. Section 1397(a)(1)(A) provides that no automobile may be sold or even manufactured for sale unless it complies with federal safety standards. To be sure, an unmarketable automobile would not be a practicable alternative. Thus, an alternative design cannot be considered practicable unless it is shown to comply with federal safety standards.

> Highway Traffic Safety Administration, the court cannot impose a duty on a car manufacturer to manufacture such a vehicle.

Court of Appeals Brief for Appellant at 20. Nowhere in the opinion of the Court of Appeals is there any suggestion that this issue had not been properly raised in the District Court.

III. State Contract Law and the State Procurement Exception to the Preemption Provision of the Act Are Inapplicable to This Case.

Rather than confront and respond to the constitutional questions raised by petitioner, respondents take refuge in a specious claim that the judgment in this case was predicated upon a finding that Chrysler breached a contract to supply Pennsauken Township with police patrol cars providing a greater degree of occupant protection than ordinary Chrysler models. The contract alleged to have been breached purportedly arose from procurement specifications concerning the vehicle's crashworthiness. Respondents also argue that because of these specifications the Dawson vehicle falls within an exception to the preemption provision of the Act, which provides that a state or political subdivision may establish safety standards nonidentical to federal standards but only if they are "higher" standards and restricted to vehicles "procured for its own use." *See* 15 U.S.C. § 1392(d).

This exception is totally inapplicable to the Dawson patrol car: there was not a scintilla of evidence to indicate that the township had set any procurement standards, much less a "higher" standard, with regard to crashworthiness. Indeed, the District Court specifically rejected this argument and ruled as a matter of law that the procurement specifications for the vehicle included no special requirements for crashworthiness and that Chrysler made no rep-

resentations that the police patrol cars would be safer than ordinary passenger vehicles. Court of Appeals Appendix for Appellant at 3509a-11a. The District Court also explicitly rejected respondents' contentions that the township's specifications for the Dawson vehicle involved the "frame and structure of the car" or "included changes in structural members." *Id.* at 3560a, 3511a. The District Court concluded:

> Nothing represented by Chrysler could possibly be construed to mean the vehicle had a degree of crashworthiness greater than a normal car. * * * Plaintiffs simply cannot claim that the frame and support members of this vehicle were any different from that of a normal passenger vehicle.

Id. at 3509a, 3511a.

The factual predicate upon which respondents base their breach of contract theory has thus been entirely discredited by the District Court: no special procurement requirements relating to crashworthiness were ever proposed by the township; nor did petitioner ever make any representations in this regard. The conclusion is inescapable— petitioner and the Township of Pennsauken never entered into a contract including terms that would bring the Dawson vehicle within the state procurement exception of §1392(d). Plainly, respondents cannot now escape the purview of the explicit preemption provision of the Act by fatuously claiming a breach of a contract that never even existed.

IV. Review of the Important Federal Issues Presented in the Petition is Essential at This Time.

Respondents argue that "there is no compelling reason to grant certiorari" in this case. Resp. Br. at 30. To the contrary, substantial and troubling issues of national concern, starkly raised but left unresolved by the Court of Appeals, pose an alarming threat not only to the American

automobile industry but also to a pervasive scheme of uniform regulation designed to assure safety on the nation's highways. The impact of the result in this case has broad implications extending far beyond the special interests of this petitioner: hundreds of "second collision" cases have been filed across the country, and in each one, as the Court of Appeals indicated, individual juries applying varying laws in different jurisdictions will, in effect, set nationwide safety standards and thereby impose conflicting requirements on automobile manufacturers. This result, which is in utter derogation of congressional intent and violative of the express preemption provision of the Act, is not an inevitable concomitant of the federal scheme. Indeed, as petitioner has strongly urged, the provisions of the Act precluding the setting of nonidentical safety standards on the one hand, while retaining liability at common law on the other, can be judicially harmonized. The unfair and inefficient burdens engendered by this system of ad hoc standard-setting promote, as the Court of Appeals recognized, serious injury to a broad spectrum of important national social and economic goals.

CONCLUSION

For the reasons stated herein and in the Petition, a Writ of Certiorari should issue to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

HARRY A. SHORT, JR.
Attorney of Record
LIEBERT, SHORT, FITZPATRICK & LAVIN
One Franklin Plaza
Philadelphia, Pennsylvania 19103
(215) 564-5800

SHEILA L. BIRNBAUM
SKADDEN, ARPS, SLATE, MEAGHER & FLOM
919 Third Avenue
New York, New York 10022

CARYL L. PICOTTE
12000 Lynn Townsend Drive
Detroit, Michigan 48288

Attorneys for Petitioner
Chrysler Corporation

Of Counsel:

WILLIAM R. MEAGHER
GARY E. CRAWFORD
EDWARD G. IMPERATORE

January 27, 1981.